

Meeting of 2000-11-28 Regular Meeting

MINUTES  
LAWTON CITY COUNCIL REGULAR MEETING  
NOVEMBER 28, 2000 - 6:00 P.M.  
WAYNE GILLEY CITY HALL COUNCIL CHAMBER

Mayor Cecil E. Powell, Also Present:  
Presiding Bill Baker, City Manager  
John Vincent, City Attorney  
Brenda Smith, City Clerk  
LTC Anthony Puckett, Fort Sill Liaison

The meeting was called to order at 6:30 p.m. by Mayor Powell. Notice of meeting and agenda were posted on the City Hall notice board as required by State Law.

ROLL CALL

PRESENT: James Hanna, Ward Two  
John Purcell, Ward Four  
Robert Shanklin, Ward Five  
Barbara Moeller, Ward Six  
Stanley Haywood, Ward Seven  
Michael Baxter, Ward Eight

ABSENT: G. Wayne Smith, Ward One  
Glenn Devine, Ward Three

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL REGULAR MEETING OF NOVEMBER 14, 2000.

MOVED by Purcell, SECOND by Haywood, to approve the minutes. AYE: Shanklin, Moeller, Haywood, Baxter, Hanna, Purcell. NAY: None. MOTION CARRIED.

AUDIENCE PARTICIPATION:

Marilyn Feaver, President and CEO of Lawton-Fort Sill Chamber of Commerce, 629 "C" Avenue, said an election will be held on December 12 on a cent sales tax proposal. She said they felt it was important for this group to be apprised of what they are trying to do and the reasons they are doing this election on December 12; we have been going to any number of civic clubs, outlying communities and have visited with other city councils. Feaver said she was not requesting the Council to take any action tonight, to approve or disapprove, but rather felt it was a matter of courtesy that they should come and do the presentation.

Feaver said it is a cent sales tax on December 12 that they will be asking voters to go to the polls and approve. She said it is a County-wide sales tax dedicated to economic development. Feaver said when she says dedicated, she means it cannot be used, under penalty of law, for any other thing; the ballot is written as such so it can only be used to assist existing industry and for the recruitment of new industry and jobs to the county. Oversight would be provided by the Comanche County Industrial Development Authority (CCIDA) and the tax would be for three years beginning January 1, 2001. She said most cities do this for five years, but early on they had a meeting with a large contingency of retail people representing the Lawton community; they invited about 150 to attend the meeting and about 30 attended, and they reached an agreement to receive the blessing of those in attendance if it would be done for three years and three years only.

Feaver said reasons to fund economic development are to create more jobs, higher paying jobs, improve the quality of life for those living in Comanche County, and stop the out migration of population due to people not being able to find jobs here. Funding must be provided due to competition. Only 3,000 industrial announcements are made each year across the United States; only about 750 of them will even consider locating in a rural area, which this is considered to be. Those numbers are provided by the American Economic Development Council and all the numbers and statistics being quoted tonight have a source other than the local chamber of commerce. Lawton-Fort Sill competes with every metropolitan and non-metropolitan city in the country for each industrial announcement.

Feaver said another reason to fund economic development is that we are almost out of resources. She said the CCIDA, to their credit, has funded any number of economic development projects and that has depleted their resources. Feaver said

we are almost out of land in the Lawton Industrial Park, and people refer to that park as the Goodyear Industrial Park west of town; it started out as a full quarter section of land, 160 acres; 78 acres were purchased by CCIDA to accommodate Republic Paperboard and Silver Line Plastics, for a total of 238 acres. We now have about 36 usable acres left in that park and none of those acres have access to rail, which is a key element in many industrial announcements.

Feaver said economic development should be funded to raise per capita income. Per capita incomes were given as: Stephens County \$19,422; Grady County \$17,000; Oklahoma City \$23,337; Tulsa County \$26,553; Norman \$21,203; Wichita Falls \$26,000; Lawton \$21,257. In 1990, Lawton's was \$15,246 so we have seen a 39% increase in eight years in per capita income. Some of the increase is due to the military having pay increases, also the economy has been good, and because we have been recruiting more and better paying jobs to Comanche County. This 1/4 cent sales tax will generate approximately \$1.7 million per year or a total of \$5.1 million over three years. These funds would be used, as shown in the ballot, to assist existing industry expansion, industrial and business park development and expansion, marketing the city and county outside the State of Oklahoma, the recruitment of new business and industry and incentives. Incentives can be more than just cash, it can be land or water or sewer lines or our match for industrial access funds; it could be in the form of cash, which is referred to as job creation grants. Every industry that has received any type of cash incentive from CCIDA over the last several years has always signed a contract agreeing to create a certain number of jobs for a certain length of time, and if they did not meet those requirements, they were required to pay back the money they received.

Feaver said the Comanche County Industrial Development Authority consists of six appointees, along with the three County Commissioners; each commissioner has two appointments. The members that oversee these funds are: Fred Fitch, John Veal, Wayne Smith, David Pope, John Mackey, Paul Elwanger, Larry Buchwald, Gail Turner, and Chairman Dr. Charles Kelsey. She said this group of individuals has a lot of integrity and really watches how the dollars are spent very closely.

Feaver said the Chamber's record for the past several years is: Bar-S with 300 jobs, Chem-Pac Industries with 120 jobs; Wackenhut Lawton Correctional Facility with 395 jobs; Republic Paperboard with 130 jobs; expansion of American Eagle Maintenance Facility with 20 jobs; Crusader with 200 jobs; Assurant Group with 300 jobs; Silver Line Plastics with 75 jobs. Those numbers total to a little over 1,500 jobs with a total payroll of \$40.5 million and a capital investment of \$323 million, and this does not include all of the new industries, such as the Defense Finance and Accounting Center, the Red Cross Case Management Center, the new Lawton Veterans Center, TCIM or ITI; when all are totaled, there is an annual payroll of \$66 million.

Feaver said if we are doing so well, you might wonder why we need to continue funding economic development. The University of Oklahoma did a study on Comanche County's labor force; 9,220 people are underemployed, meaning they are currently working at jobs that are lower paying than they have had in the past or they have the skills, education or experience to be paid for. 5,700 of those 9,220 said they would change jobs for a job that would pay \$8 to \$10 per hour, not saying we are only recruiting jobs that pay \$8 to \$10 per hour but this is indicative of how low the wages are. 5,800 said they would travel 20 plus miles for a job that would pay \$8 to \$10 per hour, so we have a significant number of underemployed people in Comanche County. She said when new industry is brought in, existing employers are forced to pay their employees more in order to keep them, and that raises per capita income for Comanche County.

Feaver said many cities have already decided to fund economic development. Ada, Ardmore, and Bartlesville have a cent sales tax; Duncan and Ponca City have a cent sales tax. These are some of the cities Lawton competes with. Abilene, Amarillo, Gainesville, and Wichita Falls each have a cent sales tax dedicated to economic development. Feaver said they did a study to see how we would compare with other cities and current sales tax rates are: Ada 8.5%, Duncan 8.75%, Elk City 8.5%, Enid 8.35%, Oklahoma City 7.875%, Shawnee 8.5%. Lawton would be in a reasonable range of sales tax. Sales tax rates for the listed cities in Texas are 8.25% so if people drive to Wichita Falls to shop it will not be to save money because of the sales tax. Shoppers would not pay this tax until spending \$4, at which point it would cost an additional penny; five cents for every \$20; twenty-five cents for every \$100. Average cost per family, and Comanche County's average household is 2.5 persons as determined by the Oklahoma Department of Commerce from U.S. Census statistics, would pay seventy-five cents per week per household, or \$3.24 per month, or \$38.90 per year due to this tax.

Feaver said the benefits of the tax would be a decline in welfare rolls because more people are working at better paying jobs; retail sales will increase because more people will have discretionary income; home and auto sales would increase; school ad valorem would increase; tax rolls will increase, not for the individual but because more people are working, the tax burden would be spread out over more families.

Feaver said in summary, they are asking voters to go to the polls and approve a cent sales tax, county-wide, because we do economic development for this entire county, the dollar does not stop at the city limits. Many people who work in Lawton live in the outlying regions and vice versa. She said it is dedicated to economic development; not one penny goes for salaries anywhere, not one penny goes to the Chamber of Commerce, anyone can approach the Comanche County Industrial Development Authority if they have a project they believe is feasible and worthy of funding; oversight is provided by that public trust authority for a period of three years.

Mayor Powell said he would like to make a couple of statements, first, someone has got it started that the advertising being done right now is being paid for by the hotel/motel tax and that is not true. He said he had been in meetings from the inception with the group that put this plan together, and one person was charged with soliciting the funds to pay for the advertising. He asked Feaver if that was correct. Feaver said that is absolutely true, no public funds are being used to fund the election. Mayor Powell said he would like to support what Feaver said because he sat in on a meeting where the

economic director was there from Abilene and also Tyler, Texas, and they laughed saying they would beat Lawton every time because Lawton does not have any money and they did have money, and that is a true statement. Mayor Powell said when they went after some things at the airport and it went to Texas, Lawton was not even in the running simply because they had millions of dollars and right now, we have zero dollars. Mayor Powell said when you are staying status quo, you are rescinding back down the hill.

Haywood said they had made a presentation at Ranch Oaks and at Lawton View, and those in attendance received it very well, and he appreciated the presentations. Feaver said she appreciated that opportunity and those who had seen the presentation had been very receptive. Mayor Powell said the Chamber has a Q & A publication to answer questions on this topic, in particular any negative things that may be going around, and people can drop by the Chamber and ask for that because it answers many questions.

Shanklin said he felt the Council should pass a resolution supporting this and he was going to ask that it be on the agenda. He said he is invested in Lawton, and the sales tax is flat and Fort Sill is not as full as we would like to see them and may never get to the level it has been in the past. Shanklin said if you are invested in Lawton and want to see a future growth and growth in per capita income and property values, you should support this. Shanklin said he was sorry the Council had not got in on this before. He said he had been trying to get everything in the central corridor and to get Lawton to grow a little bit to the east and get everything on an equal balance, and until that is done, it is a one-way street to the west. Shanklin said the Veterans Center is to the east, and Council had something to do with that. Purcell asked if staff could do a resolution for the next meeting to support this and Shanklin said staff will do that.

#### BUSINESS ITEMS:

1. Hold a public hearing and consider a resolution amending the 2020 Land Use Plan from Residential-Single Family and Duplex to Commercial and Office and an ordinance changing the zoning from R-2 (Two-Family Dwelling District) to C-1 (Local Commercial District) zoning classification located at 1612 SW Wisconsin Avenue. Exhibits: Resolution 00-\_\_\_\_; Ordinance 00-\_\_\_\_; Map; Applications; Site Plan; CPC Minutes of 10/12 and 10/26/00; Letter from Housing Authority Executive Director; Land Use and Zoning Maps. (Petition in favor of request on file with City Clerk)

Bob Bigham, City Planner, presented a viewgraph map showing location of this 50 x 140 foot tract located at approximately the southeast corner of 17th and Wisconsin. Zoning of the surrounding area is R-2 to the north, south and east, and Public Facilities to the west across 17th Street. Land use of the surrounding area is Lawton Housing Authority units to the north and east, single-family to the south, and the airport clear zone to the west. The applicant is Timothy Pearson. Proposed use of the vacant lot is a laundromat. The Planning Commission on October 12 opened a public hearing and one person spoke in favor and one person spoke in opposition; the CPC tabled the request because the applicant did not have a site plan and the CPC wanted to be assured the proposed use would sit on this 50 foot lot. At the October 26 CPC meeting, the request was denied for both the amendment to the Land Use Plan and the rezoning. The CPC considered this C-1 a case of spot zoning and did not feel this was an appropriate use for the Lawton View area with all the redevelopment that is taking place.

Bigham said 16 notices were mailed out for the public hearing, as well as notice being published in the newspaper. A petition with 37 signatures was turned in supporting the rezoning. A map was shown indicating two property owners within 300 feet signed the first petition of support. On October 20, an additional petition of support was received with 17 names, and those persons lived all the way from Pecan Valley to Park Lane Addition.

#### PUBLIC HEARING WAS OPENED.

Timothy Pearson, owner of the property, said 80-85% of the residents of Lawton View are low income or fixed income, and most are without transportation. He said he felt by building a laundromat there, it would provide something for them and revive the Lawton View community.

Haywood asked how long Pearson had owned the property and Pearson said about five or six years. Haywood said he had known Pearson for a long time and appreciated him coming but he (Haywood) was a member of the Lawton Housing Authority and the Lawton View Association. He applauded Pearson's efforts but felt this was not a good location. Haywood said he was not going to abstain tonight, and we need a laundromat but Pearson has been attending some of the meetings that have been held and Pearson knew they were going to put the laundromat on 11th Street. He asked if Pearson was aware of that and Pearson said he thought so.

#### PUBLIC HEARING WAS CLOSED.

MOVED by Purcell, SECOND by Baxter, to deny the request to amend the 2020 Land Use Plan from residential single-family and duplex to commercial and office, and deny the change of zoning from R-2 to C-1.

Moeller asked why this was a bad location. Haywood said we have a Southwest Faith Based Consortium and we have discussed this, where we would want to put a laundromat, and we are going to put the houses in one area, and we have phases one and two. Haywood said Pearson is a part of that committee and he knows what is being said. Moeller asked if they were planning to put a laundromat in the area but just not at this location. Haywood said not at that location but at another location. Mayor Powell said he heard them say it would be on 11th Street.

VOTE ON MOTION: AYE: Moeller, Haywood, Baxter, Hanna, Purcell, Shanklin. NAY: None. MOTION CARRIED.

2. Hold a public hearing and consider a resolution amending the 2020 Land Use Plan from Residential-Multiple Family to Commercial and Office and an ordinance changing the zoning from R-3 (Multiple-Family Dwelling District) to P-O (Professional and Office District) zoning classification located at 3502 SW J Avenue. Exhibits: Resolution 00-108; Ordinance 00-45; Map; Applications; Site Plan; CPC Minutes of 10/26/00; Land Use and Zoning Map.

Bigham pointed out the location on a viewgraph map showing the 1.6 acre tract. Current land use of the requested area is single-family and proposed use is a child guidance center and the Land Use Plan designates the area as multi-family residential. On October 26, CPC opened a public hearing and two persons spoke in favor, no one spoke in opposition; CPC by an eight to zero vote approved the amendment to the Land Use Plan and the rezoning. Nine property owners were notified within the 400 foot notification area and proper notice was published in the newspaper.

Mayor Powell asked Bigham if he was at liberty to tell the Council what this would be used for. Bigham said the applicant could explain. Rick Kerr, owner of Quality Property Management Company, said they would give a long-term lease to the Junior League of Lawton for The Sanctuary. Kerr said the building would be used for a multi-unit task force made up of representatives from the Department of Human Services, Lawton Police, hospital and medical staff, District Attorney's Office, and five to seven different facilities coming together in one location to help interview children that have been taken out of the home due to any kind of abuse, and most counties have programs such as this. Kerr said when a child is taken from a home due to abuse, they must go through a series of interviews from the agencies listed, and it is traumatic enough for the child to be taken from the home without having to go through so many different entities separately. Mayor Powell said this will be at the south edge of a child care center and it is not being used for anything now. Mayor Powell said he did not think Mr. Kerr was getting much money out of this house, and it was probably a donation to this group and it does serve an excellent need and he wanted that point brought up.

Baxter said he was told a fence would be constructed between the day care center and the house. He asked if that had been built yet. Kerr said no, there will be two series of fences; according to zoning rules, a privacy fence will run along the property line and a chain link fence will be run from the back side of the house around to the far property line, basically enclosing the entire property. Baxter asked when the fences would be put up. Kerr said they have already got bids and had talked to the Job Corps, and they are looking to do it very soon. Kerr said he has the building permit, he will turn it in tomorrow morning, and they had asked Steve Barnes to look at it, and they hoped to have the fences up within 30-45 days. Baxter said he would hold him to that.

PUBLIC HEARING OPENED. No one appeared to speak and the public hearing was closed.

MOVED by Moeller, SECOND by Baxter, to adopt Resolution 00-108 amending the 2020 Land Use Plan from residential multi-family to commercial and office, and approve Ordinance 00-45 changing the zoning from R-3 to P-O located at 3502 SW J Avenue.

(Title only) Resolution 00-108

A resolution approving an amendment to the 2020 Land Use Plan for the City of Lawton from Residential-Multiple Family to Commercial and Office located at 3502 SW J Avenue.

(Title read by Clerk) Ordinance 00-45

An ordinance changing the zoning classification from the existing classification of R-3 (Multiple-Family Dwelling District) to P-O (Professional and Office District) zoning classification on the tract of land which is hereinafter more particularly described in Section One (1) hereof; authorizing changes to be made upon the Official Zoning Map in accordance with this ordinance.

VOTE ON MOTION: AYE: Haywood, Baxter, Hanna, Purcell, Shanklin, Moeller. NAY: None. MOTION CARRIED.

3. Confirm election date for the Hotel/Motel Tax election and provide guidance. Exhibits: None.

Steve Livingston, Finance Director, said on September 26 the Council selected the election date to coincide with the City's general election on March 13, 2001, to place before the voters an extension of the current hotel/motel tax, which is 5% and will end in April 2001. He said guidance is needed on setting the rate and duration of the tax; current rate and duration is 5% for five years and Council can set those factors as appropriate.

Purcell asked if the tax to stay in a hotel is both the 5% and the regular 8% sales tax, for a total of 13%. He said some cities have various other taxes for this. Marilyn Feaver, Chamber of Commerce, said it is 13% total for Lawton at this time. Mayor Powell asked if Council wanted to set the rate at 5%.

Jamie Hall, General Manager of Spring Hill Suites by Marriott, said he had been asked to represent the other hotels. He said those who collect the tax are opposed to increasing the tax rate; no other city in Oklahoma has a rate higher than 5% and very few are even at 5%; Tulsa has 5% but 1% of that goes toward a convention center. Hall said his guests notice the tax rate and this is not a typical tourism destination city so some customers might stay in a surrounding community rather than paying the additional money. He said it is about \$2 to \$3 per night for the tax. Hall said there was also some concern as to where these funds would be allocated; if there is to be an increase, hopefully they could an idea as to where those funds would go.

Mayor Powell asked what Wichita Falls was charging and Hall said 5%. Mayor Powell asked what Oklahoma City was charging and Hall said 2%. Mayor Powell asked what Chickasha was charging and Feaver said 5%.

Shanklin asked if Hall was asking that there be no tax. Mayor Powell said no, Mr. Hall said no raise. Shanklin asked if Hall helped the City when it filled his hotel with softball tournament guests. Hall said he had given some free rooms as per the agreement. Shanklin said he guessed Hall appreciated the tournaments and Hall agreed.

Haywood said he liked the idea of setting aside a percentage for a convention center. Purcell said he thought Tulsa had four or five percent, but there was an additional charge that was assessed under a different name, but it was another tax. Purcell said most cities charge 14-17% when all of the charges are added together.

Shanklin asked if Hall said he wanted input as to where these funds would be spent. Hall said if it is increased, he would hope there would be an explanation of where the money was going, if it would go to the same place it is going now or if there would be other places where it would be spent. Hall said he was not opposed to the 5% rate and felt it was a necessary tax but he would disagree with an increase.

Ken Isaac, 310 NW Compass, said he and his wife operate a business at 2322 W Gore, and he was for the hotel/motel tax, which has done a lot of good for the Lawton area, and he applauded those at the Chamber for the work they have done with the funds allocated to them from the hotel/motel tax. Isaac said he exited the Army in 1995, stayed in Lawton and opened a business, and began to watch the politics in town because it directly affected his business. He said his concern was what he would call the accountability of this money; the hotel/motel allocation for the period ending June 30, 2000, was \$320,000 and that was exactly what was spent by the Chamber. Isaac said this was like sending his son to the store to buy bread and milk with \$10, expecting change to be returned, but being told the cost was \$10. He said he knew the money was given to the Chamber after the last election, the ballot stated the money that was not used would be returned to the City, and it worried him that the numbers worked out so evenly. Isaac said he had watched this over the last few years when Council discussed this also and his feeling from watching the meetings was that it all worked out, don't worry about it. He said as a citizen and businessman, he was worried about it.

Isaac suggested discussion be opened when this comes for a ballot issue that the money would have to be watched and accounted for. He said CCIDA would be watching the cent sales tax, and he asked that Council think about adding a provision to this for the money to be accounted for more than what he had found, which was six lines. Isaac said the money may not be coming out of his pocket, but as a citizen he did vote for the tax which makes it Lawton's money and he would like to know a little more about how the money is being spent.

Marilyn Feaver, Chamber of Commerce, said what they spend at the Chamber for tourism, economic development and governmental affairs far exceeds \$320,000 or whatever their allocation is from the hotel/motel tax. Mayor Powell asked if the Chamber had figures from a CPA to support that. Feaver said yes, they just got their audit to their board yesterday for the last fiscal year, and their financial report and audit is much more than six lines. Mayor Powell asked if that information is open to the public. Feaver said yes, and Scott Hatch is their accountant. Feaver said the financial statements are extremely long and the accountability is there. Feaver said they spend what is given to them from the hotel/motel tax for the purposes in the budget that is approved by the City Council each year, and they spend many, many more dollars that come from membership dues revenue on economic development and tourism.

Mayor Powell asked Feaver what the Chamber felt should be charged on the tax percentage. Feaver said they had numbers from the State Tourism Association showing the hotel/motel tax in other cities and none are above 5%; Stillwater is 4% and Oklahoma City is 2%, so they believed 5% was enough because people are paying the full state and local sales tax in addition to the hotel/motel tax.

Baxter asked if the \$320,000 or \$360,000 was used for economic development. Feaver said a portion of it is dedicated to economic development, and the costs are broken down in the binders presented previously; the majority of the money is spent on tourism. Feaver said they were not opposed to extending the period of the tax.

Moeller asked what specific guidance was being sought by staff. Baker said the rate and duration need to be established, as well as confirming the election date.

MOVED by Shanklin, SECOND by Haywood, to set it for 5% for a term of five years and the election to be held on March 13, 2001.

Haywood asked if the rate can be increased later. Vincent said a resolution and ordinance will be presented for Council consideration on December 12, and the rate cannot be changed after the election without another vote of the people.

VOTE ON MOTION: AYE: Hanna, Purcell, Shanklin, Moeller, Haywood. NAY: Baxter. MOTION CARRIED.

4. Consider approving a contract amendment with Burns & McDonnell Engineering Company, Inc. for professional services for the design and inspection of the Landfill Maintenance Building Project. Exhibits: Amendment to Agreement.

Jerry Ihler, Public Works Director, said the 2000 CIP included landfill projects for cells two and three, the master plan for the future, and the design and construction of a maintenance facility. An engineer was hired to do the master plan and

consideration was given to in-house staff doing the plans and specifications, and the inspection, but staff does not have the expertise for this project, which will be a maintenance facility for heavy equipment with heavy overhead cranes; we do not have the time or expertise to do it in-house with the other 2000 CIP projects and the new 1995 CIP projects.

Shanklin asked if Ihler was satisfied with it and if it was a fair deal. Ihler said they were estimating it would be about 8% of the construction cost, which is in-line for this type of facility.

MOVED by Purcell, SECOND by Baxter, to approve the contract amendment with Burns & McDonnell Engineering Company for professional services for the design and inspection services of the Landfill Maintenance Building Project. AYE: Hanna, Purcell, Shanklin, Moeller, Haywood, Baxter. NAY: None. MOTION CARRIED.

5. Receive a briefing from the City Attorney on the Oklahoma Open Meeting Act. Exhibits: The Oklahoma Open Meeting Act.

Vincent's briefing is summarized as follows: A booklet was presented, and a copy of the exact Oklahoma Open Meeting Act was provided in the agenda package. There are 15 sections to the act; since it was enacted in 1977 there have been 12 Oklahoma Supreme Court cases, the most recent on September 26, 2000; two Oklahoma Court of Criminal Appeals cases, seven Oklahoma Court of Appeals cases, and 57 Attorney General opinions, two of which were handed down this year.

Sections 301 and 302 set out the name of the act and the public policy; Section 303 gets into the meat of the issue and there have been four Attorney General opinions on this particular section. The most important of those opinions is 82-114 which says all matters to be discussed on the agenda, including executive sessions and new business as defined, can be discussed in either open session or executive session, as appropriate. Attorney General Opinion 82-81 relates to meeting notices. Most of the AG Opinions and court cases deal with school districts, and in *Andrews vs. Independent School District #29*, it says the notice that must be given must be in plain language sufficient to be comprehended by a person of ordinary intelligence. The agenda is not the green booklet given to the Council; the agenda is the document posted on the window that must be posted at least 24 hours in advance of the meeting available for viewing before, during and after business hours.

Section 304 includes seven definitions. There have been 25 AG Opinions trying to determine what those definition sections mean. A public body, which in this case is the City Council, Water Authority or one of the other 11 public trusts the City has, is a governing body that is supported in whole or in part by public funds or is instituted with the expenditure of public funds, and it includes committees and subcommittees. There has recently been an AG Opinion and a Supreme Court case defining what a public body is not; the Supreme Court case was handed down September 26, 2000, and it states that a meeting of staff persons with interested parties is not a public body meeting; staff is not part of the public body, and in our case, the public body is the elected officials. A meeting means the conducting of business of the public body by a majority of its members being personally together or by teleconference. Regular scheduled meeting was dealt with today and that is the setting of the meetings, in this case 24 Council meetings or 12 Water Authority meetings, that must be done by December 15 each year. There is no requirement that every public body have regularly scheduled meetings but if you do not, you are relegated to special meetings and then you are limited to what you can discuss. A special meeting is "any meeting other than regular or emergency meeting" and an emergency meeting is defined and it is something that must be done right now affecting immediate loss of funds, danger to life, safety and health, to paraphrase. All votes must be publicly cast and recorded.

Section 306, the title is circumvention of the act, teleconferences exempted. No informal gathering or electronic telecommunication, except teleconferences by a majority of the members, shall be used to decide any action or to vote on any matter. AG Opinion 81-69 says the Oklahoma Open Meeting Act prohibits a single member from meeting privately or by telephone with each of the other members to obtain their signature on a document or to take an action otherwise required to be taken in open session. That opinion was reaffirmed in Opinion 81-315.

Section 307 deals with executive sessions. Subsection A says no public body shall hold an executive session unless specifically provided for in this section, and Subsection B sets out eight reasons that a governing body can go into executive session; only five of those reasons apply to a municipality. Subsection C lists ten other grounds and one applies to this body, it says all Councils supported in whole or in part by public funds, or entrusted with the expenditure of public funds, for the purpose of conferring on matters pertaining to economic development, including the transfer of property, financing and creation of a proposal to entice business to locate within their jurisdiction, and that is relatively new dealing with economic development. One reason previously mentioned to go into executive session was for sale or appraisal of real property and acquisition, and Subsection D specifically says that executive session for the purpose of discussing the purchase or appraisal of real property is limited to members of the body, its attorney and immediate staff, so there is a limitation on who can go into a meeting on real property. Subsection E sets out three requirements for conducting an executive session, and Section 311B2 sets out three additional requirements. Subsection F states that wilful violation of any provision of the executive session requirements subjects each member of the body to criminal sanctions and the minutes of the meeting would become public at that point. Regarding minutes, in *Barry vs. Board of Governors of Registered Dentists*, the State Supreme Court set out a requirement for executive session minutes, and executive session minutes do not have to be verbatim, they are a summary of the discussions that take place in the executive session and they are to be kept confidential. There have been three other Supreme Court cases and eight Attorney General opinions discussing executive sessions and executive session minutes. As an example, Attorney General Opinion 80-218, involving a charter city, the Attorney General said if the charter does not provide for executive sessions, no matter what the Open Meeting Act required, the Council could not go into an executive session; however, that was overturned in *Kingfisher vs.*

State of Oklahoma, so even the courts and the Attorney General have disagreed on some points.

Shanklin asked if it specifically states that city councils have to have executive session minutes, and he thought the information previously distributed referred to school boards, and councils were just thrown in. Vincent said Barry vs. Board of Dentists applied to a governing body of the dental licensing division, and the way the Supreme Court defined governing body, this Council, the Water Authority and the other public trust authorities are governing bodies and are subject to the requirements of Barry as it relates to taking minutes in executive session. Shanklin said it was not done for 15 years and now we are told to do it. Vincent said yes, it came from the Barry case. Shanklin said the information he was given dealt with a school board and did not specifically say city council. Vincent agreed, and said a governing body under the Open Meeting Act is a governing body whether it be a school district, state agency or a city council.

Vincent said the teleconferences is a relatively new act, Section 307.1 was enacted in 1993 and there have been eight amendments to that section since 1993, the last becoming effective July 1, 2000. To show how confusing that particular section is, in 1995 it was amended and the amendment was amended again before the end of that legislative session and they did the same thing this year. A public trust can have teleconferences, the Water Authority or Lawton Economic Development Authority could have a teleconference as long as 80% of the members are present in person, they can get the other 20% of the members on a conference telephone, however, the vote of the person on the phone must be recorded in public so we would have to have some kind of special telecommunications so the audience could hear what that vote was. Shanklin said we are not going to do that. Mayor Powell asked if that had been needed since Vincent had been here and Vincent said no.

Sections 308, 309 and 310 apply to state agencies and do not apply to municipalities. Section 311 is the public notice requirements, and that was done tonight for the Water Authority and Council. Subsection 1 says all public bodies shall give notice in writing by December 15 of each calendar year of regularly scheduled meetings; however, there is no requirement for regularly scheduled meetings. Subsection 4 provides that municipal bodies, including public trusts, will file their notice of regularly scheduled meetings with the city clerk of the municipality. Subsections 7 and 8 go into detail on how that is done. Subsection 9 provides that advance public notice in writing shall be given within 24 hours prior to such meeting, for regularly scheduled meetings, and Subsection 10 says on reconvened or continued meetings you can only discuss the items that were on the agenda of the meeting it was continued or reconvened from. Subsection 11 causes some confusion, and as recently as this summer the City Clerk attended a meeting where the OML attorney said the agenda for special meetings is not required to be posted until 24 hours in advance of the special meeting. The notice of the special meeting must be posted 48 hours in advance of the special meeting. Attorney General Opinion 82-81 stated "under the Open Meeting Act, the purpose of the notice required by Section 311.9 of the act is to provide the public with advance notification of date, time and place of all regularly scheduled meetings of the public body, and the purpose of the notice required for special meetings is the same, but the special meeting notice must also contain the agenda for the meeting". He said that he and the City Clerk had determined that the agenda for the special meeting must be posted 48 hours in advance based on this Attorney General's opinion.

Subsection 12 discusses emergency meetings, and B2 sets out the additional three requirements for executive session. Section 312 discusses minutes of the meetings and recordings thereof, and Barry vs. Board of Governors of Registered Dentists sets forth the requirement for minutes of executive session. If we have an emergency meeting, the written minutes of the emergency meeting must contain the nature of the emergency, the proceedings, and reasons for declaring the emergency to be in the minutes verbatim.

Vincent said one of the reasons he and the City Clerk were very conservative in determinations on what can go on an agenda and how the agenda is going to be prepared is found in Sections 313 and 314; actions taken in willful violation of the act are invalid and two court cases have determined what invalid means. The most important section, in Vincent's opinion, is that the trustees of all public trusts and the City Council, if they are found in violation of the act and willfulness is not an excuse, in other words, if it is just a plain violation and we messed up, the members of the governing body can be found guilty of violating the act and the fine is not to exceed \$500 or imprisonment in jail not to exceed one year.

#### CONSENT AGENDA:

6. Consider the following damage claims recommended for denial: Thomas Cook and Southwestern Bell Telephone. Exhibits: Legal Opinions/Recommendations. Action: Denial of claims.

7. Consider the following damage claim recommended for approval: Carl Robinson. Exhibits: Legal Opinion/Recommendation. Action: Approval of claim in the amount of \$45.00.

8. Consider authorizing the Mayor to sign a letter to the Commissioners of the Land Office requesting permission to allow the City of Lawton to sublease the property contained in the five-year agricultural lease contract. Exhibits: None. (Letter on file) Action: Approval.

9. Consider a revocable permit to the RR Company, LLC for an encroachment of a commercial building on a platted alley in the Erwin Acres Plat. Exhibits: Application; Survey; Revocable Permit. Action: Approval.

10. Consider approving a resolution authorizing the filing of an application by the Lawton Water Authority with the Oklahoma Water Resources Board for financial assistance, refinancing a portion of the Authority's outstanding Interim Construction Loan. Exhibits: Res 00-109.

(Title only) Resolution 00-109

A resolution authorizing the Lawton Water Authority to file an application with the Oklahoma Water Resources Board for financial assistance through its Clean Water SRF Program and its State Loan Program Revenue Bonds for the purpose of refinancing a portion of the Authority's existing interim construction promissory note.

11. Consider approving the settlement and adopting a resolution authorizing the City Attorney to file and make payment of the settlement of the Workers' Compensation case of George Ridley currently pending in the Workers' Compensation Court. Exhibits: Resolution 00-110; Letter from United Safety & Claims.

(Title only) Resolution 00-110

A resolution authorizing the City Attorney to settle and make all required payments in the Workers' Compensation case of George Ridley in the amount of Fifteen Thousand Six Hundred Forty-Two and 00/100s (\$15,642.00), currently pending in the Workers' Compensation Court, and filing all necessary documents.

12. Consider setting a date of January 9, 2001, to hold a public hearing and consider an ordinance closing an easement located in Section 4, Township 2 North, Range 12 West, submitted by Mattie Boyles. Exhibits: Application; Map; Council Policy 5-1. Action: Approval.

13. Consider approving the 2001 Notice of Meeting Schedule for Lawton City Council meetings. Exhibits: 2001 Notice of Meeting Schedule. Action: Approval.

14. Consider a resolution establishing the City of Lawton Centennial Celebration Fund. Exhibits: Resolution 00-111.

(Title only) Resolution 00-111

A resolution establishing the City of Lawton Centennial Celebration Fund.

15. Consider accepting permanent utility easements for the Flower Mound Road Waterline Project. Exhibits: None. (Easements are on file) Action: Accept easement from William T. Drewry, General Partner of the Drewry Family Limited Partnership.

16. Consider a Resolution of Necessity for real property acquisition for the expansion and upgrade of the City of Lawton Water Treatment Plant in Medicine Park, Oklahoma. Exhibits: None. (Resolution 00-112 on file)

(Title only) Resolution 00-112

A resolution declaring the necessity for acquiring and owning real property described in Exhibit "A" attached hereto for the purpose of expanding and upgrading the City of Lawton Water Treatment Plant in Medicine Park, Oklahoma, and other necessary improvements; authorizing and directing the City Manager to attempt to acquire said property by purchase and settlement of damages; and authorizing the City Attorney to acquire the property by condemnation proceedings if it cannot be purchased.

ITEM 17 WAS CONSIDERED SEPARATELY AS SHOWN BELOW.

18. Consider awarding a construction contract to T & G Construction, Inc. for the Industrial Park Street Improvement (Neal Blvd. Extension Phase II) Project 2000-38. Exhibits: Location Map; Bid Tabulation. Action: Award a construction contract to T & G Construction, Inc. for the Industrial Park Street Improvement (Neal Blvd. Extension Phase II) Project #2000-38 in the amount of \$168,219.00.

19. Consider approving Change Order No. 2 for the 2000 CIP Waterline Replacement Project 2000-12 with S.M. Burk Mechanical Contractors. Exhibits: Map. Action: Approve Change Order No. 2 adding an additional 21 days to the contract time (re: construction of water line to serve Silver Line Plastic Corporation facility).

20. Consider approving the following contract extension: A) Credit card acceptance program with Bank of Oklahoma. Exhibits: None. Action: Approval.

21. Consider awarding contract for Copper and Brass. Exhibits: Recommendation; Abstract. Action: Award contract to Water Products of Oklahoma.

22. Consider approving contract change order of Automatic Transmission Repair to delete repair of Allison transmissions. Exhibits: Change order; Memorandum. Action: Approval.

23. Consider approval of appointments to boards and commissions. Exhibits: Memo. Parks & Recreation Commission: Diane St. Clair (Mayor's appointment) Term: 11/28/00 to 11/28/02; Lawton Economic Development Authority: Larry Neal, Term: 11/28/00 to 11/28/06; Pension Trust Commission: Joe Mercado (Retired Employee) Term: 11/28/00 to 11/1/05; Highland Cemetery Board: Chris Elledge, Term: 3/26/00 to 3/26/06

24. Consider approval of payroll for the period of November 13 through 26, 2000. Exhibits: None.



Baxter asked that Item 17 be considered separately.

MOVED by Baxter, SECOND by Purcell, to approve the Consent Agenda items as recommended with the exception of Item 17. AYE: Hanna, Purcell, Shanklin, Moeller, Haywood, Baxter. NAY: None. MOTION CARRIED.

17. Consider a Resolution of Necessity for real property acquisition for the expansion and upgrade of NW 38th Street, Cache Road to Rogers Lane. Exhibits: None. (Resolution 00-113 on file)

Baxter said when he ran for office he told the voters he would never use the words eminent domain and he would be no part of such action, so he would abstain from voting. Shanklin said America has got where it is today by eminent domain.

MOVED by Purcell, SECOND by Haywood, to adopt the resolution of necessity for real property acquisition for the expansion and upgrade of NW 38th Street, Cache Road to Rogers Lane. AYE: Purcell, Shanklin, Moeller, Haywood, Hanna. NAY: None. ABSTAIN: Baxter. MOTION CARRIED.

(Title only) Resolution 00-113

A resolution declaring the necessity for acquiring and owning real property described in Exhibit "A" attached hereto for the purpose of expanding and upgrading NW 38th Street from Cache Road to Rogers Lane, and other necessary improvements; authorizing and directing the City Manager to attempt to acquire said property by purchase and settlement of damages; and authorizing the City Attorney to acquire the property by condemnation proceedings if it cannot be purchased.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER.

Shanklin said there will be a water rate study kick off meeting on December 14 at 8 a.m. He said it has been about three years in coming and he looked forward to trying to be there.

Baker said he would not be at the next Council meeting as he was leaving for Boston on December 5 to attend the National League of Cities meeting. Mr. Jackson will be sitting in for Baker. Hanna wished his wife a happy birthday and thanked her for her support.

Mayor Powell said a certificate was from the U.S. Retired Senior Volunteer Program recognizing Lawton for support in furthering the program. He said the Lawton-Fort Sill community is run by volunteers who do a really good job and volunteer many valuable hours to make this a better community.

Hanna said in regard to volunteers, there are many in the Sentinel Program, who last year donated about 40,000 hours of their services to the City but yet we make them buy their own uniforms and clothing. He asked if there was a way the City could buy them a couple of shirts and a pair of pants since they are volunteers. The City Manager will look into it.

BUSINESS ITEM:

25. Pursuant to Section 307B4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the civil suit between Bob Dismuke and The City of Lawton in the District Court of Comanche County, and take appropriate action in open session. Exhibits: None.

MOVED by Baxter, SECOND by Shanklin, to convene in executive session as shown on the agenda and recommended by the legal staff. AYE: Purcell, Shanklin, Moeller, Haywood, Baxter, Hanna. NAY: None. MOTION CARRIED.

The Mayor and Council convened in executive session at 7:40 p.m. and reconvened in open session at 7:50 p.m. with roll call reflecting all members present except Smith and Devine.

Vincent reported executive session was held pursuant to Section 307B4, Title 25, Oklahoma Statutes, to discuss the civil suit of Bob Dismuke vs City of Lawton, Comanche County District Court. Discussion was held and review of the court order was made. Vincent suggested a motion directing the City Attorney not to appeal the court order.

MOVED by Shanklin, SECOND by Baxter, to direct the City Attorney not to appeal the court order in the Dismuke case. AYE: Moeller, Haywood, Baxter, Hanna, Purcell, Shanklin. NAY: None. MOTION CARRIED.

Mayor Powell said he had been in Oklahoma City a big part of the day on the Work Force Development Act, and he encouraged support in any way possible. He said it is an attempt to partner those who have businesses with those who do not have a job, and it is under ASCOG. Mayor Powell encouraged news media coverage of the program, rather than relying solely on the computer for access to information.

There being no further business to consider, the meeting adjourned at 7:52 p.m. upon motion, second and roll call vote.